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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PIOTR JASZCZYSZYN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SUNPOWER CORPORATION, et al., Defendants.	Case No. 4:22-cv-00956-HSG <u>CLASS ACTION</u> AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS <u>DEMAND FOR JURY TRIAL</u>

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I. INTRODUCTION

1. Lead Plaintiff Steamfitters Local 449 Pension & Retirement Security Funds ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following, based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters, based on the investigation conducted by and through Plaintiff's counsel, which included, among other things, a review of SunPower Corporation's ("SunPower" or the "Company") press releases, website, United States Securities and Exchange Commission ("SEC") filings, analyst reports, media reports and other publicly disclosed information about Defendants (as defined below). Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

2. This is a federal securities class action alleging violations of the anti-fraud provisions of the federal securities laws on behalf of all persons and entities who purchased or otherwise acquired the publicly traded securities of SunPower Corporation during the period from August 3, 2021 through January 20, 2022, inclusive (the "Class Period"), and who suffered damages as a result of the conduct alleged herein. The action is brought against SunPower, Peter Faricy ("Faricy"), the Company's Chief Executive Officer ("CEO"), President, and Chairman of the Company's Board of Directors, and Manavendra S. Sial ("Sial," together with Faricy "Individual Defendants," and Individual Defendants collectively with the Company, "Defendants"), the Company's former Chief Financial Officer ("CFO") and Executive Vice President, for violations of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule 10b-5 promulgated thereunder.

3. During the Class Period, Defendants violated §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5, by making false and misleading statements and omissions concerning: (i) the current status and trajectory of SunPower's commercial business, including the Company's margin performance and balance sheet; (ii) the Company currently being on track to meet SunPower's FY21 financial

guidance;[1] and (iii) the risk that SunPower might or could experience defects or other quality issues in its products or product components.

II. BACKGROUND AND OVERVIEW

4. SunPower describes itself as a solar energy company that delivers complete solar solutions to customers primarily in the United States and Canada through an array of hardware, software, and financing options, as well as "Smart Energy" solutions. The Company was founded in 1985, and held its Initial Public Offering on November 16, 2005. The Company's stock has traded on the NASDAQ since 2005 under the symbol "SPWR." In 2011, SunPower became a majority-owned subsidiary of TotalEnergies Solar INTL SAS ("TotalEnergies").

5. The Company generates revenue primarily from the sale of solar energy generation, storage, and use products and services in what is called the downstream "Distributed Generation" or "DG" residential (often referred to as "resi") and commercial markets. SunPower, which in 2020 divested its manufacturing business, Maxeon Solar Technologies, Ltd. ("Maxeon"),[2] relies on key technology and components from a limited number of third-party suppliers to incorporate into the hardware it sells (or leases) to its customers.

6. At the start of the Class Period, the Company divided its business into three main segments: Residential, Light Commercial ("RLC"); Commercial and Industrial Solutions (either "CIS" or "C&I," sometimes described as the large or heavy commercial portion of the business); and "Others." SunPower, and the financial analysts that follow the Company, frequently referred to the "light commercial" portion of SunPower's RLC business as "Light Commercial Value-Added Reseller" or "CVAR." For the fiscal year ended January 3, 2021, the Company reported $1.125 billion in total revenue. Approximately $848 million (~75% of total revenues) of that total was

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[1] As used herein "FY" means SunPower's fiscal year. SunPower reports on a fiscal year that runs until the Sunday closest to the end of the applicable calendar year. Thus, FY21 means SunPower's fiscal year 2021, which ran from January 4, 2021 until January 2, 2022. Specific quarters are designated by the quarter number followed by the letter Q, and the last two numbers of the fiscal year. Thus, 3Q21 indicates SunPower's third quarter in fiscal year 2021, which ran from July 5, 2021, to October 3, 2021.

[2] Maxeon continued through the Class Period to be SunPower's exclusive supplier of solar panels.

generated from the RLC segment; $255 million (~23%) from CIS; and $66 million (~5.9%) from "Others."[3]

7. The quality of SunPower's products, which SunPower warrants, and SunPower's "leadership" in the commercial market, were important points of differentiation for the Company. As Wells Fargo reported in a June 29, 2022 analyst report titled "SPWR: Initiating Coverage with an Underweight Rating," "SunPower has historically differentiated its offering based on hardware (Maxeon panels and Enphase micro-inverters), commercial leadership (voted top provider), and an integrated warranty contract that covers all components (panels, inverters, batteries)."[4]

8. On April 19, 2021, Defendant Faricy became CEO, President and a member of SunPower's Board of Directors. Faricy took over at a time of uneven performance for the Company, and in his first two conference calls with analysts and investors he described his focus as "diving deep" into SunPower's residential and commercial business segments:

- [5/5/21 call:] "My focus over the next 100 days will center around diving deep into the residential and commercial, and industrial businesses."
- [5/13/21 call:] "In the near term, my focus over the next 100 days will center around diving deep into the residential, commercial and industrial businesses."

9. During the Class Period, beginning with the Company's reporting of its 2Q21 financial results on August 3, 2021, Defendants falsely asserted (or omitted to state facts necessary to make the statements not misleading), among other things, that the Company's commercial business was performing well and was currently on track for the Company to meet its financial guidance. In a press release issued that day, Faricy was quoted as stating:

- "'***Our solid second quarter results reflect continued execution in*** both our residential and ***commercial businesses*** . . . .'"

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[3] In combination these totals exceed 100% because they do not include negative "Intersegment and GAAP adjustments."

[4] As SunPower explains, "[e]very solar power system needs an inverter to transform the direct current electricity collected from the solar panels into utility-grade AC [alternating current] power that is ready for use." Microinverters, in contrast to "string" inverters, allow individual solar panels or modules within a larger system or array to be monitored and shutdown individually. For example, in case of damage that may cause a fire, or on a precautionary basis, such as during inspection or repair.

- "'***[W]e remain on track to achieve our 2021 financial outlook and are well positioned to drive growth and profitability in 2022 and beyond***.'"

10. Also on August 3, 2021, Defendants held an earnings call to discuss the Company's financial results and guidance. During the call, Sial also falsely told investors that the heavy commercial or CIS business was performing well, in particular representing that the commercial segment's margin performance was "significantly better":

> ***I think the business is significantly better year-on-year, both from a top line perspective as well as a margin point of view. And then more importantly, we expect the CIS business to be profitable in the back half of the year, which you recall is a significant turnaround from the last couple of years.***

11. The next day, on August 4, 2021, Defendants filed a quarterly financial report on Form 10-Q with the SEC. The Form 10-Q falsely purported to warn investors that SunPower might face financial and other risks "if" its products were defective:

- "The failure of a supplier to supply . . . components that meet our quality, quantity, and cost requirements, ***could*** impair our ability to manufacture our products or could increase our cost of production."

- "***If*** we have quality issues with our solar and related products, our sales ***could*** decrease and our relationships with our customers and our reputation ***may*** be harmed."

- "[D]efects ***could*** cause us to incur significant warranty, non-warranty, and re-engineering costs."

- "[W]e ***may*** be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs."

- "***[P]otential future*** product or component failures ***could*** cause us to incur substantial expense to repair or replace defective products or components."

- "Repair and replacement costs, as well as successful indemnification claims, ***could*** materially and negatively impact our financial condition, cash flows, and results of operations."

- "[Q]uality issues ***can*** have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, any of which ***could*** adversely affect our business, results of operations, cash flows, and financial condition."

12. On October 5, 2021, Defendants held a conference call to announce that they were exploring "strategic options" for the CIS business segment, indicating that Defendants were considering selling it. Defendants nevertheless continued to tout the ongoing strength of SunPower's commercial business and affirmed that CIS was indeed "a point of strength" and "very healthy."

13. On November 3, 2021, Defendants held an earnings call to discuss the Company's 3Q21 financial results and guidance. During the call, Faricy falsely described the state of the Company's operations and balance sheet, stating:

> Over the past few years, you've been with us through several major restructuring events and strategic changes. I'm pleased to report we have found our footing. ***With a streamlined company and our healthiest balance sheet in years, we are now going on offense*** to grow our business across a vast, mostly untapped residential TAM.

14. On November 4, 2021, Defendants filed a quarterly financial report on Form 10-Q with the SEC. Like the quarterly report for 2Q21, the 3Q21 Form 10-Q falsely purported to warn investors that SunPower might face financial and other risks "if" its products were defective:

- "The failure of a supplier to supply… components that meet our quality, quantity, and cost requirements, ***could*** impair our ability to manufacture our products or could increase our cost of production."
- "***If*** we have quality issues with our solar and related products, our sales ***could*** decrease and our relationships with our customers and our reputation ***may*** be harmed."
- "[D]efects ***could*** cause us to incur significant warranty, non-warranty, and re-engineering costs."
- "[W]e ***may*** be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs."
- "***[P]otential future*** product or component failures ***could*** cause us to incur substantial expense to repair or replace defective products or components."
- "Repair and replacement costs, as well as successful indemnification claims, ***could*** materially and negatively impact our financial condition, cash flows, and results of operations."
- "[Q]uality issues ***can*** have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased

> costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, any of which ***could*** adversely affect our business, results of operations, cash flows, and financial condition."

15. Each of the above representations concerning: (i) the current status and trajectory of SunPower's commercial business, including the Company's margin performance and balance sheet; (ii) the Company currently being on track to meet SunPower's FY21 financial guidance; and (iii) the risk that SunPower might or could experience defects or other quality issues in its products or product components was materially false and misleading when made because Defendants knew or deliberately disregarded and failed to disclose the following facts:

(a) cracking or other defects in third-party components in SunPower's commercial solar systems had already developed in nearly all of the Company's commercial systems;

(b) as a result of the cracking or other defects in third-party components in SunPower's commercial solar systems, SunPower would be required to incur tens of millions in costs to replace those defective third-party components; and

(c) in light of (a) and (b) above, SunPower was not on track to achieve its FY21 financial guidance.

16. Throughout the Class Period, the Company's stock price traded at artificially inflated prices as high as $34.61. Based on Defendants' misrepresentations and omissions, investors expected that the Company's commercial business was and would continue to be a key driver of revenue and margin growth, and that the Company's financial results would not be negatively affected by already existing product defects. The artificial inflation of the Company's stock price was maintained by Defendants' continued boasting of the strength of the commercial business, as the truth about the cracking or other defects in third-party components in SunPower's commercial solar systems remained concealed from the investing public.

17. On December 7, 2021, SunPower published to its website the latest edition of its manual for Safety and Installation Instructions for the United States and Canada. The manual contained newly added language concerning cracking in connectors not present in the 2019 or 2020

editions of the United States and Canada manual. The December 7, 2021 manual included the following new warnings:

- "Do not allow the connectors to come in contact with chemicals such as greases, oils and organic solvents which ***may cause stress cracking***."
- "Connectors are factory assembled with intentional gaps between the cable nut and the body of the connector. Do not retighten module connector nuts as this ***may lead to stress cracking of the connector*** assembly and will void the warranty."

18. In addition, the December 7, 2022 manual added new advisories concerning best practices for safely handling connectors, such as:

- "For connectors, which are accessible to untrained people, it is imperative to use the locking connectors and safety clips, if applicable, in order to defend against untrained personnel disconnecting the modules once they have been installed."
- "Avoid exposure of electrical connections to direct sunlight and do not place the connector in a location where water could easily accumulate."

19. After December 7, 2021, the Company's stock price continued to trade at artificially inflated prices above $18 per share.

20. Then, on January 20, 2022, SunPower issued a press release preannouncing that it would miss its earnings guidance for 4Q21 and FY21 and expected approximately $27 million of supplier-quality related charges in the fourth quarter of 2021 and approximately $4 million in the first quarter of 2022 due to "cracking" problems in products across its commercial business segments:

> "Through a product quality assessment, the company has identified a cracking issue that developed over time in certain factory-installed connectors within third-party commercial equipment supplied to SunPower. . . .
>
> SunPower expects approximately $27 million of supplier-quality related charges in fourth quarter 2021 and approximately $4 million in the first quarter of 2022 as it pursues recovery of costs from the suppliers."

21. The release also noted that SunPower, no doubt in response, had hired a new executive to oversee the Company's supply chain.

22. Following SunPower's January 20, 2022 preannouncement, financial analysts were quick to report on the scope and timing of the problem. "[N]early all" of SunPower's commercial solar systems were affected, which would cost an estimated $31 million and require replacement

throughout 2022. Importantly, analysts reported that Defendants must have learned about the pervasive problem of cracking in third-party components in conducting due diligence pursuant to selling the CIS business segment, if not earlier. For example:

- January 21, 2022, Roth Capital Partners report:

> After market hours on 1/20, SPWR preannounced Q4'21 results to the downside and detailed the company's expectations for (1) charges of ~$31mn (~$27mn in Q4'21 and ~$4mn in Q1'22) related to the proactive replacement of third-party connectors experiencing a "cracking issue" ***for nearly all C&I systems since 2019***. . . .
>
> **Overall thoughts**. Given the overall negative sentiment in the sector, look for the stock to be weak. . . . ***We believe SPWR may need to retrofit ~1,000+ sites representing close to ~9MW (our guesstimate)***.
>
> **Downside Q4'21 preannouncement**. SPWR reiterated its prior Q4'21 revenue guidance of $361-421mn, but noted that Q4'21 adjusted EBITDA is expected to be at the low end of the previous guidance of $18-41mn. Management attributed the lowered outlook for adjusted EBITDA to (1) $6.5mn of resi EBITDA effectively pushed into 2022 due to weather in California and Covid impacts and (2) an additional $3mn invested in sales and marketing in Q4'21 to expand in "underpenetrated areas nationally."

- January 20, 2022, Truist Securities report:

> **SPWR Addressing 3P Quality Concerns**. . . . SPWR has identified a cracking issue in certain connectors within third party commercial equipment supplied to the company. . . . ***As the company is pursuing the sale of its CIS business, we wouldn't be surprised if such findings were revealed in a due diligence process, though we note SPWR specifically indicated the issue was identified in a product quality assessment***.

- January 21, 2022, Cowen Equity Research report:

> SunPower disclosed a quality issue with some of its commercial equipment. The company noted that a third party connector that was installed at the factory has developed cracking issue. . . . ***Our sense is this issue needs to be resolved before the intended sale of the C&I division occurs and likely came up in due diligence.***

23. In response to the aftermarket January 20, 2022 disclosures, SunPower's stock price declined from a close of $19.02 on January 20, 2022, to $15.80 on January 21, 2022, a 16.9% drop, on more than 11.4 million shares trading volume as compared to only 2.8 million shares traded on January 20, 2022.

24. Members of the putative class seek to recover their economic losses as a result of the conduct alleged herein.

III. JURISDICTION AND VENUE

25. The claims asserted herein arise under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

26. Jurisdiction is conferred by 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act, 15 U.S.C. §78aa.

27. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and §27 of the Exchange Act, 15 U.S.C. §78aa.

28. SunPower is headquartered at 51 Rio Robles, San Jose, CA 95134. Certain of the acts and conduct complained of herein, including the dissemination of materially false and misleading information to the investing public, occurred in this district.

29. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

IV. PARTIES TO THE ACTION

30. Plaintiff Steamfitters Local 449 Pension & Retirement Security Funds purchased the publicly traded securities of SunPower during the Class Period and was damaged as a result of Defendants' wrongdoing as alleged in this complaint.

31. Defendant SunPower Corporation is a solar energy company incorporated under the laws of Delaware and headquartered in San Jose, CA. SunPower common stock is listed and trades on the NASDAQ, an efficient market, under the ticker symbol "SPWR." As of February 18, 2022, the Company had 173,115,964 shares issued and outstanding. SunPower is a majority-owned subsidiary of TotalEnergies.

32. Defendant Peter Faricy is, and was at all relevant times, Chief Executive Officer and President of SunPower. At the start of the Class Period Faricy was a Director on SunPower's Board of Directors and, on November 1, 2021, he became Chairman of the Board of Directors.

33. Defendant Manavendra S. Sial was at all relevant times Chief Financial Officer and Executive Vice President of SunPower.

V. CONTROL PERSONS

34. As officers and/or directors and controlling persons of a publicly held company whose common stock is traded on the NASDAQ and governed by the provisions of the federal securities laws, the Defendants had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition, performance, growth, operations, financial statements, business, markets, management, earnings, and present and future business prospects; not to make material misrepresentations with respect thereto or to omit material facts necessary to make the statements contained therein not misleading; and to correct any previously issued statements that had become materially misleading or untrue so that the market price of the Company's common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

35. Defendants participated in the drafting, preparation, and/or approval of the various public shareholder and investor reports, and other communications complained of herein, and were aware of, or deliberately disregarded, the misstatements contained therein and omissions therefrom and their materially false and misleading nature. Because of their membership(s) on SunPower's Board of Directors and/or executive and managerial positions within SunPower, the Individual Defendants had access to the adverse undisclosed information about the Company's financial condition and performance as particularized herein, and knew (or deliberately disregarded), that these adverse facts rendered the positive representations made by or about SunPower and its business, or adopted by the Company, materially false and misleading.

36. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases, and other public statements pertaining to the Company during the Class Period. Defendants were provided with copies of the documents or scripts of statements alleged herein to be misleading prior to or shortly after issuance, and/or had the ability and/or opportunity to prevent issuance of those statements, or cause them to be corrected. Accordingly, Defendants are responsible for the accuracy of the public reports and releases detailed herein.

37. The Company and the Individual Defendants, by disseminating materially false and misleading statements and/or concealing material adverse facts, are liable as participants in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of SunPower common stock. The scheme: (i) deceived the investing public regarding SunPower's business, operations, management, and the intrinsic value of SunPower common stock; and (ii) caused Plaintiff and other members of the Class (as defined below) to purchase SunPower common stock at artificially inflated prices.

VI. DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED DURING THE CLASS PERIOD

38. Throughout the Class Period, Defendants made numerous false and misleading representations in: (a) press releases announcing quarterly financial and earnings results to the public; (b) follow-up conference calls with investors and analysts which were published to the market; and (c) quarterly filings with the SEC on Forms 10-Q signed and certified by Defendants.

A. Defendants Make Material Misrepresentations and Omissions in Connection with the Reporting of 2Q21 Financial Results

39. On August 3, 2021, the Company filed a Form 8-K attaching a press release containing SunPower's financial results for 2Q21 (ended July 4, 2021). The Company reported GAAP revenue of $308.9 million and net income of $75.2 million, or $0.40 diluted earnings per share ("EPS"). The Company also reported Adjusted EBITDA of $22.2 million. In the accompanying press release, Faricy emphasized "'***Our solid second quarter results reflect continued execution in*** both our residential and ***commercial businesses***'" and "'we ***remain on track to achieve our 2021 financial outlook and are well positioned to drive growth and profitability in 2022 and beyond***.'" For FY21, Defendants provided GAAP revenue guidance of $1.41 to $1.49 billion, net income guidance of $40 to $60 million, and reported "Adjusted EBITDA guidance remains unchanged at $110 to $130 million inclusive." For 3Q21, the Company provided GAAP revenue guidance of $325 to $375 million, GAAP net loss of $10M to $0, and guided "Adjusted EBITDA will be in the range of $21 to $31 million as linearity has significantly improved compared

to the previous two years." The press release also announced, "In the second quarter of fiscal 2021, we sold . . . certain commercial projects" though it did not identify which projects.

40. Following issuance of the August 3, 2021 press release, and after the market closed on August 3, 2021, SunPower held a conference call for analysts and investors to discuss the financial results for 2Q21 and financial guidance for 3Q21 and FY21. The call was hosted by Faricy and Sial. During the call, Sial answered analyst questions concerning SunPower's commercial business. In doing so, he falsely touted the purported improvement in the CIS business, including from a "margin point of view":

> [Sial:] Yes. . . . On the CIS side of the house, while the business has tailwinds, the business has got a mix of projects, and we are seeing some of those projects move into 2022.
>
> * * *
>
> So from a CIS perspective, I think the second quarter margins are reflective of the inherent lumpiness in the business. We knew that going into the second quarter. Having said that, ***I think the business is significantly better year-on-year, both from a top line perspective as well as a margin point of view. And then more importantly, we expect the CIS business to be profitable in the back half of the year, which you recall is a significant turnaround from the last couple of years***. So that's the CIS business.

41. Also during the call, an analyst asked Faricy about keeping the commercial business in the SunPower family. In response, Faricy stated that although the recognition of revenue from the commercial business could be uneven or lumpy, it was still an attractive business to be in:

> [Analyst:] [I]t's very evident that the business right now is going in the direction of resi[dential]. The margins are better. The TAM opportunity is better. In response to an earlier question, you talked about a long-term opportunity perhaps associated with the large commercial business. I was wondering if you could maybe dig into more detail on the investment thesis associated with maintaining, with keeping this business in the SunPower family. And when do you expect this business to contribute more meaningfully to EBITDA and cash flow?
>
> [Faricy:] Yes. I think those are very fair questions, by the way . . . So I think the biggest investment thesis for me is, forward-looking, this is a really attractive business from a growth perspective. And I think it will probably still, it's a little bit of a different nature than residential. So we'll still probably have some lumpy period by nature of the fact that it's commercial and industrial.

42. The above representations were repeated or reinforced in an accompanying set of investor slides. For example, Slide 17 touted SunPower's "Strong 1H'21 residential bookings/ CIS backlog further enhances typical 2H strength."

43. Also during the call, Faricy referred one analyst's question about SunPower's storage products and services to Eric Potts ("Potts"), SunPower Executive Vice President of Commercial Americas. In answering the question, Potts explained that delays in CIS projects had resulted from utility and permitting delays and SunPower's attempts to perfect the asset – including both solar and storage – as SunPower and third parties took an extended, closer look at the Company's commercial systems:

> We have been working also on the commercial side to add more storage to our solar projects. Adding that asset has created some utility and permitting delays, which we are working through as this asset becomes more frequent on the grid. And in addition, we really are working to make sure that we're perfecting the asset, the actual solar and storage project before we begin mobilization, before we sell it. Really haven't seen much delays from a component perspective, as you mentioned, it really is around the perfection of the asset. And we'll continue to work on creating greater linearity in our projects moving forward.

44. On August 4, 2021, SunPower filed its quarterly report on Form 10-Q for 2Q21. Under "Risk Factors," the report misleadingly warned that SunPower's suppliers might supply components that failed to meet SunPower's quality requirements, stating in relevant part:

> The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity, and cost requirements, ***could*** impair our ability to manufacture our products or could increase our cost of production. ***If*** we cannot obtain substitute materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required time frames.

45. The 2Q21 Form 10-Q also incorporated by reference the risk factors disclosed in the Company's annual report for FY20 (ended January 3, 2021). Under "Risk Factors," the report misleadingly warned that defects in SunPower's products or components could cause SunPower to incur costs and otherwise harm SunPower's business, stating in relevant part:

> ***If*** we have quality issues with our solar and related products, our sales ***could*** decrease and our relationships with our customers and our reputation ***may*** be harmed.
>
> *   *   *
>
> [D]efects ***could*** cause us to incur significant warranty, non-warranty, and re-engineering costs, which may not be covered by manufacturer warranties, and could significantly affect our customer relations and business reputation. ***If*** we deliver products with errors or defects, or if there is a perception that such products contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with customers include termination or put rights for non-performance. In certain limited cases, we ***could***

> incur liquidated damages or even be required to buy back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

46. The 2Q21 Form 10-Q also incorporated by reference other risk factors disclosed in the Company's annual report for FY20 (ended January 3, 2021). Under "Risk Factors," the report misleadingly warned that SunPower might be responsible for repairing or replacing defective parts or components, which could adversely affect SunPower's business, stating in relevant part:

> While we generally pass through to our customers the manufacturer warranties we receive from our suppliers, in some circumstances, we ***may*** be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs. ***If*** a manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer.
>
> * * *
>
> Increases in the defect rate of SunPower or third-party products, including components, ***could*** cause us to increase the amount of warranty reserves and have a corresponding material, negative impact on our results of operations. Further, ***potential future*** product or component failures ***could*** cause us to incur substantial expense to repair or replace defective products or components, and we have agreed in some circumstances to indemnify our customers and our distributors against liability from some defects in our solar products. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement costs, as well as successful indemnification claims, ***could*** materially and negatively impact our financial condition, cash flows, and results of operations.
>
> * * *
>
> In addition, quality issues ***can*** have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, any of which ***could*** adversely affect our business, results of operations, cash flows, and financial condition.

47. On August 4, 2021, Roth Capital Partners issued a report titled "SPWR: Resi Strength Offset by C&I Pushouts; Maintain Neutral" which noted that SunPower's CIS business (*i.e.* "C&I") was "running into more scrutiny." The report also explained that weak 3Q21 and lowered FY21 guidance had disappointed the market, stating in relevant part:

> Weak Q3 guidance. Q3 guidance missed expectations, while management lowered the full-year 2021 outlook. We believe the guidance miss can be largely attributed to lumpiness in the commercial business. ***Larger and more complex C&I projects are seeing delays as the company is running into more scrutiny with considerations like permitting***.

48. On August 4, 2021, JPMorgan issued a report titled "2Q Review: Largely Tracking Expectations Though C&I Project Timing Weighs on Near-Term Revenue," which highlighted that that analyst was encouraged by Defendants' August 3, 2021 statements: "We are also encouraged that C&I delays are not related to availability issues stemming from the industry supply chain challenges." The report continued, "[w]hile the company remains well positioned from a supply perspective, SPWR is experiencing delays in certain larger and more complex C&I projects, particularly those that involve storage which requires additional permitting."

49. On August 4, 2021, Credit Suisse issued a report titled "SunPower: Q2 In-Line, Management Hopeful for C&I Turnaround in 2H" which reported that SunPower's CIS business was suffering only from delays, not supply chain or other problems:

> C&I business pushouts ***are mostly due to permitting, and importantly the company hasn't seen any demand delays due to supply shortages plaguing the broader solar supply chain likely as SPWR has secured its needs***. Management is still hopeful for a turnaround in C&I with positive Adj EBTIDA contribution in 2H and delayed demand in 2022.
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> * * *
>
> **Segment - C&I**: Revenues $48m and non-GAAP GM% 1.5%, below Q1 ($66m, 6.4%) and CS est ($44m/10%) due to pushouts from Q2 to 2H. ***The pushouts are not due to supply chain challenges, but more due to permitting challenges***. C&I contracted backlog and pipeline remains promising with 260 MW solar contracts (+25% y/y), >500 MWh front-of-the meter (FTM) storage, 230 MWh behind the meter storage contracts, and 150 MW community solar pipeline. Management expects C&I to be profitable on Adj EBTIDA in 2H21.

50. Each of Defendants' statements set forth in ¶¶39-40, 44-46 concerning: (i) the current status and trajectory of SunPower's commercial business, including the Company's margin performance; (ii) the Company currently being on track to meet SunPower's FY21 financial guidance; and (iii) the risk that SunPower might or could experience defects or other quality issues in its products or product components was materially false and misleading when made because Defendants knew or deliberately disregarded and failed to disclose the following facts:

(a) cracking or other defects in third-party components in SunPower's commercial solar systems had already developed in nearly all of the Company's commercial systems;

(b) as a result of the cracking or other defects in third-party components in SunPower's commercial solar systems, SunPower would be required to incur tens of millions in costs to replace those defective third-party components; and

(c) in light of (a) and (b) above, SunPower was not on track to achieve its FY21 financial guidance.

51. Following the Company's August 3, 2021 financial results and earnings call, SunPower's stock price declined from a close of $25.31 on August 3, 2021, to $23.02 on August 4, 2021, but continued to trade at inflated prices as high as $34.61 on November 1, 2021.

B. Defendants Announce SunPower is Prepared and Looking to Sell the Commercial and Industrial Business

52. On October 5, 2021, SunPower held a conference call for analysts and investors. The call was hosted by Faricy and Sial, and was purportedly held to discuss SunPower's acquisition of another residential solar power provider, Blue Raven Solar LLC, for up to $165 million. However, during the call Defendants also made statements unrelated to Blue Raven, including that the Company was revising its guidance downward due to poor performance in the CIS segment, and that SunPower was exploring options for that same CIS segment. Defendants' statements also signaled how far along Defendants already were in reviewing the CIS segment for a sale, as Faricy told investors "we're looking to complete the process by the end of the calendar year." In describing these disclosures, Defendants affirmed their prior false statements concerning the current status and trajectory of SunPower's CIS business by describing it as a "point of strength" and "very healthy":

> [Faricy:] We are also announcing today that we are considering strategic options for our Commercial and Industrial Solutions business as we aim our time, attention and capital more squarely on the fast-growing and high-margin residential market.
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> * * *
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> [Sial:] Going forward, our focus will be on the residential and light commercial segment. For 2021, the residential business outlook remains strong although our third quarter key guidance metrics will likely fall below the lower end of the prior ranges primarily due to C&I solutions, project schedule delays and costs as well as the underperformance of our Light Commercial business. However, we emphasize that RLC and CIS had strong sequential bookings performance in the third quarter, and our cash position remained strong . . . .
>
> * * *

> And then on the C&I or the Commercial side, the business is lumpy. That was the primary driver of our variance from a guidance perspective, we'll probably be in the range of $3 million to $4 million lower than the lower end of the EBITDA guidance. But from a business perspective, the business is lumpy as we've talked about it, and it has the same kind of complexities associated with the larger projects that you see in the utility scale business and the broader construction industry. Having said that, we are exiting the third quarter in the C&I business with a strong bookings tailwind and sequential growth in bookings quarter-on-quarter.
>
> [Faricy:] first of all, the commercial business, you could argue, is at a point of great strength for us. It's a business that's the market share leader in commercial and industrial. I think we've talked about the fact before from a government and school perspective, we have the leading commercial solar business in the United States. So it's a business that's at a point of strength because we're the market share leader and assuming that the Biden-Harris administration improves the government ITC incentives, we anticipate this is a business that's got a great opportunity for growth as we go forward.
>
> So we're balancing speed with maximizing shareholder value. But I would say net-net, we anticipate having more clarity on the process over the coming months, and we're looking to complete the process by the end of the calendar year.
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> * * *
>
> The question that I think came up on my first couple of earnings calls is one that we've been thinking about, which is what is the role of the Commercial Industrial business and what's the role of the Residential business and how do you guys think about managing them together. And I think in the end, our conclusion is these are both really attractive businesses. They're both very healthy.

53. Each of the above statements were also repeated or reinforced in an accompanying set of investor slides. Slide six, titled "Considering Strategic Options for Commercial & Industrial Solutions," claimed that SunPower was the "market leader" in CIS, but was nevertheless exiting that business only to "doubl[e] down on the Residential business, cementing alignment with investors that expect more clarity of focus." Slide seven stated "Q3'21: Key guidance metrics are projected to be below the low end of the prior guidance ranges, primarily due to CIS project schedule delays and costs as well as performance of our Light Commercial business" and described "Strong sequential bookings growth from both RLC and CIS."

54. On October 5, 2021, Cowen Equity Research issued a report titled "BLUE RAVEN ACQUISITION EXPANDS RESIDENTIAL PRESENCE; ***C&I BUSINESS UNDER REVIEW***" which highlighted the further attention Defendants were paying to SunPower's commercial business.

55. On October 5, 2021, JP Morgan issued a report titled "SunPower Corporation: Updating Model for Blue Raven Acquisition and Potential Sale of CIS Segment" which explained

that that analyst took Defendants at their word that the sale was intended to reduce "lumpiness" and improve focus, rather than being related to any weaknesses in the segment:

> **Exploring strategic alternatives for C&I Solutions**. The CEO expects a decision to be finalized by YE21. We believe a sale of the CIS segment would result in tighter management focus ***while also reducing quarterly lumpiness***, and are ***therefore encouraged*** by the announcement . . . .

56. Following the Company's October 5, 2021 announcement that it was considering strategic options for its CIS business, SunPower's stock price traded at artificially inflated prices as high as $34.61 on November 1, 2021.

C. Defendants Make Material Misrepresentations and Omissions in Connection with the Reporting of 3Q21 Financial Results

57. On November 3, 2021, the Company filed a Form 8-K attaching a press release containing SunPower's financial results for 3Q21 (ended October 3, 2021). The Company reported GAAP revenue of $323.6 million and net income of negative $84.4 million, or negative $0.49 diluted earnings per share. SunPower also reported Adjusted EBITDA of $17.5 million, including negative $8 million from the CIS segment and explained that the Company was sufficiently advanced in considering strategic options for CIS to update investors during the current quarter: "The company is considering strategic options for CIS and will provide an update in the fourth quarter of 2021." In the accompanying press release, Sial nevertheless touted strong bookings in CIS and the Company's strong cash position, stating, "Commercial & Industrial Solutions (CIS) business also had strong bookings for the third quarter. Our cash position is strong."

58. For FY21, Defendants provided the following guidance, in relevant part:

> Fourth quarter GAAP revenue guidance for SunPower, excluding CIS and Legacy business, is $330 to $380 million and Adjusted EBITDA guidance is $28 to $46 million. Separately for CIS and Legacy business, fourth quarter revenue guidance is $31 to $41 million and Adjusted EBITDA guidance is $(10) to $(5) million due to project schedules and supply chain impacts, similar to that experienced in the third quarter. Fourth quarter GAAP net income guidance, which includes all segments, is $(5) to $15 million.
>
> For the Full Year 2021, revenue and Adjusted EBITDA guidance for SunPower, including CIS and Legacy business, is below the prior guidance of $1,410 to $1,490 and $110 to $130 million, respectively, primarily due to CIS project schedule delays impacting both revenue and Adjusted EBITDA and lower revenues from Light Commercial.

59. Following issuance of the November 3, 2021 press release, and after the market closed on November 3, 2021, SunPower held a conference call for analysts and investors to discuss the financial results for 3Q21 and guidance for 4Q21 and FY21. The call was hosted by Faricy and Sial. During the call, Faricy falsely described the state of the Company's operations and balance sheet, stating:

> Over the past few years, you've been with us through several major restructuring events and strategic changes. I'm pleased to report we have found our footing. ***With a streamlined company and our healthiest balance sheet in years, we are now going on offense*** to grow our business across a vast, mostly untapped residential TAM.

60. The above statements were also repeated or reinforced in an accompanying set of investor slides. For example, Slide four stated "Considering strategic options for Commercial & Industrial Solutions (CIS). Will provide an update in Q4'21." Slide 13 stated "CIS / legacy business impacted by supply chain and project schedule delays, Expects pipeline increase and focused on cash break even in Q4'21." And Slide 18 stated: "Negative cash generation mainly due to CIS project schedules delays and supply chain impacts, CIS focused on cash break even in Q4'21."

61. During the November 3, 2021 call, Defendants also emphasized how close they were to finalizing their plans for the CIS business:

> In terms of the direction of the business as we go forward, we mentioned we're considering strategic alternatives for the commercial business. We'll have a report back to you guys on where we come out and how we're thinking about that this quarter. So in a relatively short amount of time.
>
> And I think the point of my remarks is many of you have been with us during these different transitions. Well, those transitions are about to be over. . . .

62. On November 4, 2021, SunPower filed its quarterly report on Form 10-Q for 3Q21. The 3Q21 quarterly repeated and incorporated by reference the same false and misleading statements made in the 2Q21 quarterly report filed on Form 10-Q. Under "Risk Factors," the report misleadingly warned that SunPower's suppliers might supply components that failed to meet SunPower's quality requirements, stating in relevant part:

> The failure of a supplier to supply raw materials or components in a timely manner, or to supply raw materials or components that meet our quality, quantity, and cost requirements, ***could*** impair our ability to manufacture our products or could increase our cost of production. ***If*** we cannot obtain substitute materials or

> components on a timely basis or on acceptable terms, we ***could*** be prevented from delivering our products to our customers within required time frames.

63. The 3Q21 Form 10-Q also incorporated by reference the risk factors disclosed in the Company's annual report for FY20 (ended January 3, 2021). Under "Risk Factors," the report misleadingly warned that defects in SunPower's products or components could cause SunPower to incur costs and otherwise harm SunPower's business, stating in relevant part:

> ***If*** we have quality issues with our solar and related products, our sales ***could*** decrease and our relationships with our customers and our reputation ***may*** be harmed.
>
> * * *
>
> [D]efects ***could*** cause us to incur significant warranty, non-warranty, and re-engineering costs, which may not be covered by manufacturer warranties, and could significantly affect our customer relations and business reputation. If we deliver products with errors or defects, or if there is a perception that such products contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed. In addition, some of our arrangements with customers include termination or put rights for non-performance. In certain limited cases, we could incur liquidated damages or even be required to buy back a customer's system at fair value on specified future dates if certain minimum performance thresholds are not met.

64. The 3Q21 Form 10-Q also incorporated by reference other risk factors disclosed in the Company's annual report for FY20 (ended January 3, 2021). Under "Risk Factors," the report misleadingly warned that SunPower might be responsible for repairing or replacing defective parts or components, which could adversely affect SunPower's business, stating in relevant part:

> While we generally pass through to our customers the manufacturer warranties we receive from our suppliers, in some circumstances, we ***may*** be responsible for repairing or replacing defective parts during our warranty period, often including those covered by manufacturers' warranties, or incur other non-warranty costs. ***If*** a manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer.
>
> * * *
>
> Increases in the defect rate of SunPower or third-party products, including components, ***could*** cause us to increase the amount of warranty reserves and have a corresponding material, negative impact on our results of operations. Further, ***potential future*** product or component failures ***could*** cause us to incur substantial expense to repair or replace defective products or components, and we have agreed in some circumstances to indemnify our customers and our distributors against liability from some defects in our solar products. A successful indemnification claim against us could require us to make significant damage payments. Repair and replacement

> costs, as well as successful indemnification claims, ***could*** materially and negatively impact our financial condition, cash flows, and results of operations.
>
> * * *
>
> In addition, quality issues ***can*** have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, any of which ***could*** adversely affect our business, results of operations, cash flows, and financial condition.

65. On November 4, 2021, Evercore ISI issued a report titled "Stay the Course by Waiting for Addition by Subtraction" which raised the analyst's price target by 25% on the ground that SunPower's divestiture of the CIS segment was nearly complete and SunPower was poised for success, stating:

> [W]e are not ready to get off this train now that it is rolling. We are increasing our 2023 EV/EBITDA based valuation price target to $35 (from $28) and believe that SPWR will continue to improve its business mix, having divested of its commercial and industrials segment and completing the transition to a more concentrated residential solar systems and service provide.

66. On November 4, 2021, Roth Capital Partners issued a report titled "SPWR: Healthy Resi Segment, C&I Drag Coming to an End Soon" which noted that "[m]anagement attributed the lowered outlook to supply chain issues and project delays in the CIS/legacy business," and, as implied by the title, expressed the belief that CIS problems would soon be in the past.

67. Each of Defendants' statements set forth in ¶¶59, 62-64 concerning: (i) the current status and trajectory of SunPower's commercial business, including the Company's margin performance and balance sheet; and (ii) the possibility that SunPower might experience defects or quality issues in its products or product components was materially false and misleading or omitted material facts when made as Defendants knew or deliberately disregarded and failed to disclose the following true facts:

(a) cracking or other defects in third-party components in SunPower's commercial solar systems had already developed in nearly all of the Company's commercial systems; and

(b) as a result of the cracking or other defects in third-party components in SunPower's commercial solar systems, SunPower would be required to incur tens of millions in costs to replace those defective third-party components.

68. Following the Company's November 3, 2021 earnings call, and November 4, 2021 quarterly report, SunPower's stock price traded at artificially inflated prices as high as $33.68 on November 5, 2021.

D. SunPower Updates Its Safety Manual to Newly Acknowledge and Warn Customers that Connectors in Its Hardware Pose Risks of Cracking

69. On December 7, 2021, SunPower published to its website the latest edition of its manual for Safety and Installation Instructions for the United States and Canada.[5] The manual contained newly added language concerning cracking in connectors not present in the 2019 or 2020 editions of the United States and Canada manual.[6] The latest published manual, for example, newly warned "[d]o not allow the connectors to come in contact with chemicals such as greases, oils and organic solvents which ***may cause stress cracking***" and "[c]onnectors are factory assembled with intentional gaps between the cable nut and the body of the connector. Do not retighten module connector nuts as this ***may lead to stress cracking of the connector*** assembly and will void the warranty." In addition, the December 7, 2022 manual added new advisories concerning best practices for safely handling connectors: "[f]or connectors, which are accessible to untrained people, it is imperative to use the locking connectors and safety clips, if applicable, in order to defend against untrained personnel disconnecting the modules once they have been installed"; and to "[a]void exposure of electrical connections to direct sunlight and do not place the connector in a location where water could easily accumulate."

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[5] The manual was posted to https://us.sunpower.com/solar-resources/sunpower-solar-panel-safety-and-installation-manual-dc, and is available at: https://us.sunpower.com/sites/default/files/001-14158-safety-installation-manual-ul-certified-product.pdf (covering "SunPower E-Series, X-Series, P-Series, A-Series, MAX2, MAX3 and NE modules").

[6] *See, e.g.*, version last modified on October 23, 2020 https://us.sunpower.com/sites/default/files/001-14158-safety-installation-manual-ul-certified-product.pdf; version last modified on April 23, 2019 https://us.sunpower.com/sites/default/files/sunpower-solar-panels-safety-installation-guide.pdf

70. After December 7, 2021, the Company's stock price continued to trade at artificially inflated prices above $18 per share.

E. SunPower Discloses that Connectors Used Across the Company's Commercial Solar Systems Suffer from a Cracking Issue and that SunPower Will Incur Tens of Millions in Costs to Repair or Replace Them, Causing SunPower's Stock Price to Plummet

71. On January 20, 2022, after market hours, SunPower issued a press release on Form 8-K announcing that the Company would miss its financial guidance due to "cracking" problems with products across its commercial businesses. The release noted that the problems had developed "over time" and in both the CVAR and CIS commercial segments, and that SunPower, no doubt in response, had hired a new executive to oversee the Company's supply chain. The press release stated in relevant part:

> SAN JOSE, Calif. (January 20, 2022) – SunPower Corp. (NASDAQ:SPWR), a leading solar technology and energy services provider, today announced it is taking proactive measures to enhance customer care by replacing certain third-party connectors within its Light Commercial Value-Added Reseller (CVAR) and Commercial & Industrial Solutions (CIS) systems.
>
> Through a product quality assessment, the company has ***identified a cracking issue that developed over time*** in certain factory-installed connectors within third-party commercial equipment supplied to SunPower. There have been no reported safety incidents attributed to this issue, nor has there been any degradation of performance. Nevertheless, to avoid potential longer-term complications and ensure an excellent lifetime customer experience, SunPower is proactively replacing all of these connectors. The company plans to replace the connectors in impacted equipment largely during 2022. . . .
>
> ***SunPower expects approximately $27 million of supplier-quality related charges*** in fourth quarter 2021 and approximately $4 million in the first quarter of 2022 as it pursues recovery of costs from the suppliers. . . .
>
> GAAP Revenue for fourth quarter 2021 is expected to fall within the previously guided range of $361 to $421 million. Excluding the charge, fourth quarter adjusted EBITDA results are expected to be at the low end of SunPower's previously disclosed guidance range of $18 to $41 million. Factors affecting fourth quarter adjusted EBITDA include approximately $6.5 million of Residential EBITDA effectively pushed into 2022 as the result of weather in California and COVID impacts. Another $3 million was invested in sales and marketing to rapidly expand SunPower's serviceable solar market to more customers in underpenetrated areas nationally.
>
> * * *
>
> SunPower also announced the appointment of Derek Kuzak as Executive Vice President for Supply Chain, Quality, and Field Operations.

* * *

> As previously announced, SunPower is pursuing a sale of its CIS business as part of its growing focus on and investment in its high-growth residential business. SunPower remains in ***advanced discussions*** for the sale of CIS and expects to finalize an agreement within weeks. No final agreement has been reached and there can be no assurances that any transaction will result.

72. On January 20, 2022, Truist Securities issued a report titled "SPWR Notes Residential Softness in 4Q, Product Recall event in Commercial Business" which reported, contrary to Defendants' representations, that SunPower likely discovered the cracking issue while doing due diligence for the sale of its CIS business segment:

> **SPWR Addressing 3P Quality Concerns**. "Recall" headlines are difficult to typically construe as positive, though SPWR appears to be appropriately taking proactive measures in this instance. SPWR has identified a cracking issue in certain connectors within third party commercial equipment supplied to the company. The impacted business lines were noted as ***Light Commercial Value-Added Reseller (CVAR) and Commercial & Industrial Solutions (CIS) systems***. SPWR plans to proactively replace these connectors throughout 2022. ***As the company is pursuing the sale of its CIS business, we wouldn't be surprised if such findings were revealed in a due diligence process, though we note SPWR specifically indicated the issue was identified in a product quality assessment***.

73. On January 21, 2022, Cowen Equity Research issued a report titled "PREANNOUNCES SOFT 4Q21 DUE TO RAIN; CONNECTOR REPLACEMENT FOR C&I COSTS ~$31MN" which reported, like Truist Securities, that SunPower must have discovered the cracking issue while doing due diligence for the sale of its CIS business segment:

> **Key Takeaways from the Release**
>
> (1) SunPower disclosed a quality issue with some of its commercial equipment. The company noted that a third party connector that was installed at the factory has developed cracking issue. Cracks in connectors can allow moisture in and lead to fires, which was at the core of the '19 litigation between TSLA/WMT after C&I system fires (HERE). SunPower highlighted that there have been no reported safety incidents related to this issue, and it does not appear to impact system performance. ***Our sense is this issue needs to be resolved before the intended sale of the C&I division occurs and likely came up in due diligence***. We note ENPH is not a supplier to C&I systems where string inverters are used. Management anticipates a $27mn charge related to this issue in 4Q21 and an additional $4mn charge in 1Q22.
>
> (2) The company announced preliminary results for the upcoming quarter. Management noted that guidance is still anticipated to range between $361mn and $421mn. However, 4Q21 EBITDA is now anticipated to come in at the low end of the prior guidance of between $18mn and $41mn. Importantly, this does not include the $27mn supplier related charge. Management noted that weather-related delays in California (rainfall 125-175% above normal in 4Q HERE) as well as the continued

> impact from COVID-19 pushed ~$6.5mn in EBITDA into FY22. Increased Sales & Marketing spend ($3mn in 4Q21) to drive expansion efforts in under penetrated markets in the United State also weighed on EBITDA.

74. On January 21, 2022, Credit Suisse issued a report titled "SunPower: Commercial Recall and Rainy California; Reduce TP by $1" which lowered the target price for SunPower and questioned whether the Company also needed to exit the CVAR commercial business in light of the cracked connectors problem:

> **Bottom line**: The company is weeks away from closing large commercial (CIS) sale, but ***we expect investors to question rationale to stay in small commercial (CVAR) amid recall charges***. Excluding the charge, the company faced weather/COVID related residential project delays in CA, which we estimate pushed out mid-single digit % of residential installations from Q4 to 2022. We reduce TP by $1 to $19 due to higher opex for expansion. Our Underperform rating is unchanged given higher CA exposure, and relative valuation vs peers.
>
> * * *
>
> **Recall charge for commercial business**: SunPower announced a $27m charge to proactively replace faulty third-party connectors (junction box, module level shut down device) for commercial solar installations in 4Q21, and a $4m charge in 1Q22. Costs are likely related to labor, and impact light commercial (75% of charge) more than large commercial. We believe the charge could be covered under supplier warranty, though recovery timeline is uncertain.

75. On January 21, 2022, Roth Capital Partners issued a report titled "SPWR: Downside Q4 Preannouncement" which explained that SunPower was not replacing "certain" connectors, but rather those found in "nearly all C&I systems since 2019":

> After market hours on 1/20, SPWR preannounced Q4'21 results to the downside and detailed the company's expectations for (1) charges of ~$31mn (~$27mn in Q4'21 and ~$4mn in Q1'22) related to the proactive replacement of third-party connectors experiencing a "cracking issue" ***for nearly all C&I systems since 2019***, and (2) adjusted EBITDA for Q4'21 to be at the low end of prior guidance ($18-41mn) due to the impacts of California weather and Covid. Maintain Neutral, PT to $19 from $26.
>
> **Overall thoughts**. Given the overall negative sentiment in the sector, look for the stock to be weak as SPWR expects ~$6.5mn of Q4'21 resi adjusted EBITDA to be pushed to Q1'22 due to California weather and Covid impacts. ***We believe SPWR may need to retrofit ~1,000+ sites representing close to ~9MW (our guesstimate)***.
>
> **Downside Q4'21 preannouncement**. SPWR reiterated its prior Q4'21 revenue guidance of $361-421mn, but noted that Q4'21 adjusted EBITDA is expected to be at the low end of the previous guidance of $18-41mn. Management attributed the lowered outlook for adjusted EBITDA to (1) $6.5mn of resi EBITDA effectively pushed into 2022 due to weather in California and Covid impacts and (2)

an additional $3mn invested in sales and marketing in Q4'21 to expand in "underpenetrated areas nationally."

76. Following these disclosures, SunPower's stock price declined from a close of $19.02 on January 20, 2022, to $15.80 on January 21, 2022, a 16.9% drop, on more than 11.4 million shares trading volume as compared to only 2.8 million shares traded on January 20, 2022.

F. Post Class Period Events and Disclosures

77. On February 6, 2022, as reported on a Form 8-K filed with the SEC, SunPower finalized the sale of its CIS business to TotalEnergies, for $90 million with "additional consideration of up to $60 million in cash if certain legislative action is taken between February 6 and June 30, 2022."[7] Attached to the press release as Exhibit 2.1 was the "Equity Purchase Agreement" between SunPower and TotalEnergies. That agreement memorialized, among numerous other provisions, prior creation of a "virtual data room containing documents and information relating to, among other things, the Company, the Group Companies, the Purchased Interests, the Group Company Interests and Business made available by Seller in electronic form to Buyer and its Representatives." The agreement also indicated that the parties had retained or may retain consultants pursuant to the agreement, including identifying Wood Mackenzie and RSM US LLP by name.

78. On February 10, 2022, Truist Securities issued a report titled "SPWR Sells CIS Business to Majority Owner" which reported that "[t]he announcement follows the company's late January announcement that a sale of the CIS business was imminent, though ***SPWR has spoken to divestment through much of 2021***."

79. On February 16, 2022, after the market closed, SunPower held a conference call for analysts and investors to discuss SunPower's financial results for 4Q and FY21. The call was hosted by Faricy and Sial. During the call, Defendants revealed that, after selling off the underperforming CIS segment, they were also looking to "exit" (*i.e.* not sell, but abandon or reassign employees away from) the remaining portion of their commercial business, CVAR, which had also experienced what they described as the cracking issue:

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[7] The legislative action concerned extension of the solar investment tax credit ("ITC") which apparently did not pass until August 16, 2022, as part of the Inflation Reduction Act of 2022.

> [Sial:] We are providing guidance for 2022 adjusted EBITDA in the range of $90 million to $110 million. Relative to our prior color for 2022, the midpoint represents a reduction of approximately $35 million, with $15 million coming off as a result of our plan to exit the light commercial business this year.
>
> * * *
>
> [Analyst:] And then maybe just a quick one to follow up on the light commercial exit. Is there any change to sort of a cost structure from an OpEx perspective going forward, savings, harvest, et cetera, changes to, yes, an overall cost structure by exiting that piece of the business?
>
> [Faricy:] Well, on CVAR, most of the employees we've had working on CVAR were shared between our residential business and CVAR. So to give you a quick direct answer to your business, no, I don't see a big OpEx impact. We have a small single-digit sales team that will be impacted, but I think most of the employees will reallocate to this faster-growing and more profitable residential business immediately.

80. On February 17, 2022, Bank of America issued a report titled "Tepid FY22 outlook shifts the focus to the analyst day" which described SunPower's disappointing results and adverse impact from the decision to exit the light commercial business. In the report, Bank of America also concluded that the decision to exit the Light Commercial business "appears to follow the $27mn quality issue related to the connectors":

> SPWR's FY21 update was 'in-line' with the previous update provided by the Company (January 20th). While not surprising, we note that the FY22 expectations missed BofAe ($135mn EBITDA) and the street est. ($126mn). Mgmt. guide of $100mn accounted for $15mn adverse impact due to the decision to quit the light commercial business . . . .
>
> * * *
>
> **Exit from CIS and Light Commercial biz.: Focus on GM%**
>
> SPWR announced selling its CIS (Commercial and Industrial Solutions) business to TotalEnergies (a majority – 50% – shareholder in SPWR as well). The total cash consideration was $190mn (with a potential consideration of $60mn more) if certain legislative actions are taken between February 6th and June 30th, 2022. While the CIS business was operating at -$7mn TTM reported EBITDA, the revenue for the same period was $249mn. The $190mn transaction price implies a 0.76x revenue multiple. While the multiple is seemingly lower than the 1.2x that SPWR paid to acquire Blue Raven, we perceive the difference can be ascribed to resi v C&I exposure and lower profitability of the SPWR CIS business. On the potential earnout, we note that the condition stipulated is the ITC (Investment Tax Credit) extension passing on or before June 30, 2022. Should that happen, SPWR would be entitled to a $60mn earnout. Note that we perceive the likelihood of tax extenders passing by the middle of the year to be quite low.
>
> In continuation with SPWR's strategy to focus on the core resi business, the Company has decided to spin-off the Light Commercial business. Note that while

> the Light commercial business contributed ~$14mn GM in 2020, however, was margin dilutive in 2021 (largely due to the connector quality issue). ***Mgmt.'s decision to exit the Light Commercial business appears to follow the $27mn quality issue related to the connectors***.
>
> * * *
>
> [W]e continue to see SPWR ultimately delivering a far less compelling value proposition than resi peers which drives our ongoing Underperform rating. . . .
>
> Bottom line, we remain cautious after the latest disappointing 2022 print, much weaker than previously anticipated.

81. On August 31, 2022, SunPower issued a press release on Form 8-K announcing that, on August 26, 2022, Sial had given notice that he was leaving the Company.

82. Notably, even after selling or exiting their commercial business segments, SunPower's supply chain and related problems were not expected to be one-off problems. For example, on October 11, 2022, Bank of America issued a report downgrading SunPower that noted "the company's challenged history of execution." As Bank of America reported:

> **SPWR: Downgrade to U/Perform as Execution Risk Returns**
>
> After a series of meetings with management, dealers and ex-sales personnel, we become increasingly concerned on positioning for SPWR into 2H22 and 2023 . . . With management turnover likely complete with departure of ex-CFO Manu Sial in August, the new management team set a particularly low bar on 2022 already, guiding ~$30mm below street's EBITDA expectations ***at the start of the year***. Where we sit today, the risk is that with ***supply chain challenges*** outside of its MAXN channel, SPWR fails to hit even the midpoint of the lowered guide which screens as a starting point for ***further lackluster performance*** carry into 2023.

VII. LOSS CAUSATION/ECONOMIC LOSS

83. Plaintiff hereby incorporates ¶¶1-82, above. Defendants' deceptive conduct, misrepresentations, and omissions of material facts were a significant cause of the artificial inflation of SunPower's stock price throughout the Class Period.

84. On August 2, 2021, the day before the Class Period, SunPower's stock price closed at $24.18 per share. During the Class Period, as detailed herein, the Defendants made false and misleading statements and engaged in a scheme to deceive the market that artificially inflated the price of SunPower's publicly traded securities.

85. These materially misleading statements and omissions maintained the artificial inflation in SunPower's share price, which increased to as high as $34.61 on November 1, 2021.

Later, when Defendants' prior misrepresentations and fraudulent conduct were absorbed by the market, the price of SunPower publicly traded securities fell significantly, as the prior artificial inflation came out of the price over time. As a result of their purchases of SunPower publicly traded securities during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

86. On January 20, 2022, after market hours, SunPower issued a press release on Form 8-K announcing that the Company would miss its financial guidance due to "cracking" problems with products across its commercial businesses. The release noted that the problems had developed "over time" in both the CVAR and CIS commercial segments, and that SunPower, no doubt in response, had hired a new executive to oversee the Company's supply chain. The press release stated in relevant part:

> SAN JOSE, Calif. (January 20, 2022) – SunPower Corp. (NASDAQ:SPWR), a leading solar technology and energy services provider, today announced it is taking proactive measures to enhance customer care by replacing certain third-party connectors within its Light Commercial Value-Added Reseller (CVAR) and Commercial & Industrial Solutions (CIS) systems.
>
> Through a product quality assessment, the company has identified a cracking issue that developed ***over time*** in certain factory-installed connectors within third-party commercial equipment supplied to SunPower. There have been no reported safety incidents attributed to this issue, nor has there been any degradation of performance. Nevertheless, to avoid potential longer-term complications and ensure an excellent lifetime customer experience, SunPower is proactively replacing all of these connectors. The company plans to replace the connectors in impacted equipment largely during 2022. . . .
>
> SunPower expects approximately $27 million of supplier-quality related charges in fourth quarter 2021 and approximately $4 million in the first quarter of 2022 as it pursues recovery of costs from the suppliers. . . .
>
> GAAP Revenue for fourth quarter 2021 is expected to fall within the previously guided range of $361 to $421 million. Excluding the charge, fourth quarter adjusted EBITDA results are expected to be at the low end of SunPower's previously disclosed guidance range of $18 to $41 million. Factors affecting fourth quarter adjusted EBITDA include approximately $6.5 million of Residential EBITDA effectively pushed into 2022 as the result of weather in California and COVID impacts. Another $3 million was invested in sales and marketing to rapidly expand SunPower's serviceable solar market to more customers in underpenetrated areas nationally.
>
> * * *
>
> SunPower also announced the appointment of Derek Kuzak as Executive Vice President for Supply Chain, Quality, and Field Operations.

* * *

> As previously announced, SunPower is pursuing a sale of its CIS business as part of its growing focus on and investment in its high-growth residential business. SunPower remains in ***advanced discussions*** for the sale of CIS and expects to finalize an agreement within weeks. No final agreement has been reached and there can be no assurances that any transaction will result.

87. On January 20, 2022, Truist Securities issued a report titled "SPWR Notes Residential Softness in 4Q, Product Recall event in Commercial Business" which reported, among other things, that SunPower would have to replace defective third-party components at its own cost "throughout 2022."

88. On January 21, 2022, Cowen Equity Research issued a report titled "PREANNOUNCES SOFT 4Q21 DUE TO RAIN; CONNECTOR REPLACEMENT FOR C&I COSTS ~$31MN" which reported, among other things "4Q21 EBITDA is now anticipated to come in at the low end of the prior guidance of between $18mn and $41mn. Importantly, this does not include the $27mn supplier related charge."

89. On January 21, 2022, Bank of America issued a report titled "SunPower Corp. FY21 First Read: Miss on FY21 tgt. Amidst weather, COVID, and quality setbacks" which stated in relevant part:

> **Product Recall / Quality Incident may cost $27mn more**
>
> Note that the adjusted results do not take into account the $27mn cost impact ($4mn additional in 1Q22) due to a supplier-quality issue faced by the Company. The connectors used in the junction boxes by SPWR (not related to the MAXN solar panels or ENPH micro-inverters) were found to be defective and the Company intends to replace these connectors at the customer site. While the cost of the Component itself is not high (single-digit cent/W), SPWR expects to bear the installation/labor costs. . . . SPWR is pursuing a legal recourse to recoup these costs from the supplier . . . .

90. On January 21, 2022, Credit Suisse issued a report titled "SunPower: Commercial Recall and Rainy California; Reduce TP by $1" which lowered the target price for SunPower and questioned whether the Company also needed to exit the CVAR commercial business in light of the cracked connectors problem:

> **Bottom line**: The company is weeks away from closing large commercial (CIS) sale, but ***we expect investors to question rationale to stay in small commercial (CVAR) amid recall charges***.

91. On January 21, 2022, Roth Capital Partners issued a report titled "SPWR: Downside Q4 Preannouncement" which explained that SunPower was replacing more than just "certain" connectors, but rather those found in "nearly all C&I systems since 2019":

> After market hours on 1/20, SPWR preannounced Q4'21 results to the downside and detailed the company's expectations for (1) charges of ~$31mn (~$27mn in Q4'21 and ~$4mn in Q1'22) related to the proactive replacement of third-party connectors experiencing a "cracking issue" ***for nearly all C&I systems since 2019***, and (2) adjusted EBITDA for Q4'21 to be at the low end of prior guidance ($18-41mn) due to the impacts of California weather and Covid. Maintain Neutral, PT to $19 from $26.
>
> **Overall thoughts**. Given the overall negative sentiment in the sector, look for the stock to be weak as SPWR expects ~$6.5mn of Q4'21 resi adjusted EBITDA to be pushed to Q1'22 due to California weather and Covid impacts. ***We believe SPWR may need to retrofit ~1,000+ sites representing close to ~9MW (our guesstimate)***.

92. In response to the Company-specific news in the aftermarket January 20, 2022 press release, SunPower's stock price declined from a close of $19.02 on January 20, 2022, to $15.80 on January 21, 2022, a 16.9% drop, on more than 11.4 million shares trading volume as compared to only 2.8 million shares traded on January 20, 2022.

VIII. NO SAFE HARBOR

93. SunPower's verbal "Safe Harbor" warnings accompanying its oral forward looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

94. The Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of SunPower who knew that the FLS was false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

IX. APPLICABILITY OF THE FRAUD-ON-THE-MARKET AND *AFFILIATED UTE* PRESUMPTIONS OF RELIANCE

95. Plaintiff will rely upon the presumption of reliance established by the fraud-on the-market doctrine in that, among other things:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) the omissions and misrepresentations were material;

(c) the Company's common stock traded in an efficient market;

(d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's common stock; and

(e) Plaintiff and other members of the Class purchased SunPower common stock between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

96. At all relevant times, the market for SunPower common stock was efficient for the following reasons, among others:

(a) as a regulated issuer, SunPower filed periodic public reports with the SEC; and

(b) SunPower regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases on major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts, and other similar reporting services.

97. Plaintiff will also rely upon the presumption of reliance under *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants are predicated upon omissions of material fact for which there was a duty to disclose.

X. CLASS ACTION ALLEGATIONS

98. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or otherwise acquired SunPower publicly traded securities during the Class Period (the "Class"). Excluded from the Class are Defendants and

their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

99. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. During the Class Period, there were more than 170 million outstanding shares almost certainly owned by thousands, if not tens of thousands, of persons.

100. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

(a) whether the Exchange Act was violated by Defendants;

(b) whether Defendants omitted and/or misrepresented material facts;

(c) whether Defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(d) whether Defendants knew or deliberately disregarded that their statements were false and misleading;

(e) whether the prices of SunPower publicly traded securities were artificially inflated; and

(f) the extent of damage sustained by Class members and the appropriate measure of damages.

101. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

102. Plaintiff will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

103. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

For Violation of §10(B) of the Exchange Act and Rule 10b-5 Against All Defendants

104. Plaintiff incorporates ¶¶1-103 by reference.

105. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

106. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of SunPower common stock during the Class Period.

107. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for SunPower common stock. Plaintiff and the Class would not have purchased SunPower common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

COUNT II

For Violation of §20(A) of the Exchange Act Against All Defendants

108. Plaintiff incorporates ¶¶1-107 by reference.

109. The Individual Defendants acted as controlling persons of SunPower within the meaning of §20(a) of the Exchange Act. By reason of their positions with the Company, and their ownership of SunPower common stock, the Individual Defendants had the power and authority to cause SunPower to engage in the wrongful conduct complained of herein. SunPower controlled the

Individual Defendants and all of its employees. By reason of such conduct, Defendants are liable pursuant to §20(a) of the Exchange Act.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Determining that this action is a proper class action, having designated Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of Lead Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

D. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Awarding such equitable/injunctive or other relief as deemed appropriate by the Court.

XII. JURY DEMAND

Plaintiff demands a trial by jury.

DATED: December 15, 2022

ROBBINS GELLER RUDMAN
& DOWD LLP
SHAWN A. WILLIAMS
KENNETH J. BLACK
SNEHEE KHANDESHI

s/ Kenneth J. Black

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Lead Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 15, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Kenneth J. Black
KENNETH J. BLACK

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Mailing Information for a Case 4:22-cv-00956-HSG Jaszczyszyn v. SunPower Corporation et al

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)